LFC Requester:	Connor Jorgensen

AGENCY BILL ANALYSIS
2016 REGULAR SESSION

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SECTION I: GENERAL INFORMATION
{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:
Original X **Amendment** ____
Correction ___ **Substitute** ____

Date 02/4/2016
Bill No: HB 313

Sponsor: Reps. Patricio Ruiloba and Matthew McQueen
Agency Code: 305
Person Writing AAG James J. Torres
Short Title: CAMPAIGN PUBLIC FINANCING CHANGE
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	**FY17**		

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	**FY17**	**FY18**		

(Parenthesis ( ) Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to:
SB 11
Conflicts in part with:
SB 12

SECTION III: NARRATIVE

BILL SUMMARY

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

Synopsis:

HB 313 amends the Voter Action Act, Sections 1-19A-1, 2, 3, 6, 7,8, 9, 10, 13, 14 and 17 NMSA 1978 in several ways relating to eligibility and use of campaign financing. The bill seems designed primarily for two purposes: (1) to extend the opportunity for public financing to the office of Secretary of State; and (2) to correct the current law's matching funds provisions that the U.S. Supreme Court has ruled are unconstitutional. The following is a synopsis of relevant amended sections:

1-19A-2: HB 313 adds definitions of "contributions" and "coordinated expenditure" and removes the definitions of "seed money" and "noncertified candidate." Further, the definition of "qualifying period" for independent and minority party candidates is changed from February 1st to January 1st, creating a one month extension.

1-19A-3: A person must file a declaration of intent with the secretary of state prior to collecting any contributions, as opposed to just qualifying contributions. The amount of contributions a person may collect while remaining an eligible applicant candidate is changed from $500 total to $100 from any one contributor, excluding qualifying contributions. Further, language restricting expenditures to $500 in order to remain eligible to become an applicant candidate are stricken by this bill. These changes would seemingly allow unlimited expenditures and small contributions.

1-19A-4: An applicant candidate for Secretary of State must obtain the number of qualifying contributions equal to one-tenth of one percent of the number of voters in the state.

1-19A-6: This section is amended to remove reference to "seed money" and to add clarity to certification requirements.

1-19A-7: Language is added proscribing certain uses of funds distributed to a certified candidate, including prohibiting use for personal living expenses, payment to retire campaign debt and contributions to another campaign. Importantly, proposed subsection D of this bill appears to limit contributions from political parties to in-kind contributions. Further, all funds not used during a campaign, including the amount received from a political party or private party, must be transferred to the Secretary of State for deposit in the fund.

1-19A-8: Certified candidates would no longer be able to accept monetary contributions from a political party.

1-19A-9: Language is removed requiring noncertified candidates who have as an opponent a certified candidate to report their campaign expenditures to the Secretary of State ten days before the election. Language requiring similar reporting by people and political committees is also removed.

1-19A-10: "Seed money" is removed from the list of money required to be deposited into the fund. Instead, unspent "contributions to a candidate" shall be deposited into the fund.

Section 10: A new section to the Voter Action Act provides that an applicant candidate may collect contributions during the 60 days immediately preceding the qualifying period from voters in the candidate's district. A certified candidate may collect contributions throughout the qualifying period from any voter in the state. Total contributions from a voter shall not exceed $100 per during the election cycle. Importantly, only qualified electors registered in a candidate's district may contribute and such contributions are limited to $100 per election cycle, excluding contributions made during the qualifying period.

1-19A-13: Candidates for secretary of state are added to the fund distribution schedule. The amount to be distributed to candidates during uncontested elections is lowered from 50% to 10% of the amount available during contested elections. Language is removed requiring the secretary of state to increase the total amount to be distributed by 20% for matching purposes.

1-19A-17: Language is added requiring the Secretary of State to impose both a fine and transmit the finding to the Attorney General, instead of one or the other.

Section 13: Sections 1-19A-5 (seed money) and 1-19A-14 (matching funds) are repealed.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

1. This bill removes the provisions in New Mexico's Public Financing law, the Voter Action Act, that have been ruled unconstitutional by the U. S. Supreme Court since they increase the amount of public funds made available to a publicly financed candidate if an opponent of that candidate receives or expends a greater amount than the amount of public funds originally provided to the publicly financed candidate. *See Arizona Free Enter. Club's Freedom PAC v. Bennett*, 131 S. Ct. 2806 (2011).
2. To the extent candidates are elected to vote on issues affecting the entire State, it may be unconstitutional to deny voters from outside a candidate's district the right to contribute up to $100 to a publicly financed candidate. Proposed Section 10(A) only allows candidates to accept contributions from voters within the candidate's district in the 60 days immediately preceding the qualifying period and throughout the qualifying period. This denial might be viewed as an abridgement of the freedom of political expression and political association of the voters from outside the candidate's district who will nevertheless be affected by the candidate's votes once elected to office. The United States Supreme Court has held that the government may not restrict the number of causes or candidates a donor may support. *See McCutcheon v. Fed. Election Comm'n*, 134 S. Ct. 1434, 1438 (2014). HB 313 may be interpreted as an even greater restriction by

preventing certain voters from contributing any amount to a particular candidate. Denying the rights of citizens to contribute to candidates elected to represent the state is likely not narrowly tailored to serve a compelling state interest in preventing corruption or the appearance of corruption in elections. *See Id.*

3. A key purpose of the bill seems to be to allow publicly financed candidates to receive not only the amount of public funds specified on a per registered voter basis for each eligible office but also to use all the $100 or less contributions that the publicly financed candidate can collect. If that is accurate, it would seem helpful to clarify expressly in the bill that those $100 or less contributions may be added to the funds made available to the publicly financed candidate and are irrespective of any other limits that may be imposed on the amount of public funds a candidate may receive.
4. By striking language restricting expenditures to $500 and removing the cap on total contributions received (1-19A-3 and Section 10 of HB 313), this bill seemingly allows unlimited expenditures and contributions under $100. The removal of these expenditure and contribution limits may work against the original intent of this part of the Voter Action Act.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to SB 11

Conflicts in part with SB 12

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo.

AMENDMENTS

1. Expressly amend to clarify that the $100 or less contributions a candidate may collect are in addition to any other public funds made available to the candidate. Perhaps insert a provision to this effect as a final sentence to Section 10 C of the bill:
   "These contributions may be expended by the candidate and are in addition to any other public funds made available to the candidate or any limits imposed on the total amount of funds a publicly financed candidate may expend."
2. Strike the provision that limits a certified candidate to only receiving contributions "from voters in the candidate's district." See Section 10 A of HB 313.